



SUSPENSION/DEBARMENT

Overview

26 August 1996

Fraud Problems

Examples

- Mischarging
- Gratuities
- Kickbacks
- False Claims
- False Statements
- Mail Fraud
- Product Substitution

Non-Judicial Cases Generally Fall into the Following Categories

- Gratuities
- Government Employee Instigated Product Substitution
- Falsification/Theft of Procurement Documents
- Conflict of Interest
- Non-Performance

Policy -- Far 9.402

- (A) Agencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Debarment and suspension effectuate this policy.
- (B) The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the government's protection and not for purposes of punishment.

Suspension

Action taken by a suspending official under FAR to disqualify a contractor **temporarily** from government contracting and government-approved subcontracting; a contractor so disqualified is "Suspended".

Suspension

- Exclude For A Temporary Period
- Causes
 - Suspected/Adequate Evidence
 - Fraud
 - Anti-Trust
 - Embezzlement
 - Lack of Integrity
- Indictment
- Other Causes

Debarment

Action taken by a debarring official under the FAR to exclude a contractor from government contracting and government-approved subcontracting for a **reasonable, specified** period a contractor so excluded is "Debarred".

Debarment

- Exclude For A Reasonable, Specified Period
- Causes
 - Conviction/Judgement
 - Fraud
 - Anti-Trust
 - Embezzlement
 - Lack of Integrity
- Violation of Contract Terms
- Other Causes

Scope Of Suspension/Debarment

May Suspend/Debar:

Individual--Company

In Addition:

1. Affiliates--Where Specifically Given Written Notice And An Opportunity To Respond.
2. May Impute Individual Conduct To Company When Conduct Was Performed:
 - A. In Course of Official Duty, or
 - B. With Knowledge, Approval or Acquiescence of the Company.

Scope Of Suspension/Debarment

(Continued)

May Suspend/Debar:

Individual--Company

In Addition:

3. Seriously Improper Conduct Of A Company May Be Imputed To Any Officer, Director, Shareholder, Partner, Employee Or Other Individual Associated With The Company Who Participates In, Knows Of, Or Has Reason To Know Of, The Company's Conduct.
4. Partner In A Joint Venture Under Certain Conditions.

Administrative Agreements In Lieu Of Suspension/Debarment

- Reasons for entering into an administrative agreement:
 - --Company has taken steps outlined in DFARS 203.7000 to demonstrate that it is presently responsible.
 - --Sole source producer.
 - --Firm so large that debarment will impair national security (but subsidiary may be ok).
- Simple request by a firm suspended or proposed for debarment does NOT assure a settlement.
- On occasion a "Global Settlement" is arranged where PIO will negotiate a settlement agreement along with the Department of Justice which gets restitution, a plea agreement and other concessions. DOJ Criminal and Civil Divisions may contribute to such a "Global Settlement."

Corporate Remedies

Examples:

- Ethics/Business Conduct Guidelines
 - Yearly Review And Certification
- Policy Directives
 - Anti-Trust
 - Embezzlement
- Internal And External Audit
- Hot Line
- Preventative Law Training
- Remedial Action/Penalties

Corporate Remedies

(continued)

- Ethics Program
 - Code Of Conduct
 - Training
 - Corporate Culture
- Internal Controls
 - Time Card Controls
 - Independent Audit
 - Quality Controls
- Top Management Responsible

DFARS 209.406 Reports When Required

*Reports are prepared by contracting officer in coordination with legal staff (within 15 days of indictment or judgement order).

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|------|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| WHEN | A. | Contractor has committed, or is suspected of having committed, any of act described in FAR 9.406-2; |
| | B. | FAR 49.106 requires a report; |
| | C. | Part 203 requires a report; |
| | D. | The Government suspects a contractor of violating the Buy American Act (see FAR 25.204; or |
| | E. | The Government suspects a contractor of attempting to evade the prohibitions of debarment or suspension by changes of address, multiple addresses, formation of new companies, or by other devices. |

Note: This includes situations where the contracting officer wishes to recommend a "fact based" or "performance based" suspension debarment.

Suspension/Debarment Report Content

- Contractor
- Officers
- Affiliates
- Contracts
- Vouchers
- Assignment
- Evidence
- Continuation
- Damages
- Addresses

Checklist For Documentation Needed To Process Suspension/Debarment Cases

- NIS Report of Investigation (ROI)
- Executed copies of the Following documents:
 - a. Indictment
 - b. Plea Agreement
 - c. Criminal Information
 - d. Statement of Facts
 - e. Judgment/Commitment Report
- Subpoenas and facts used to obtain search warrants
- Name and Phone Number of AUSA
- Current addresses of Subjects/defendants/firms
- Results of interviews with witnesses
- Victim impact statements
- Declination of prosecution from AUSA after NIS ROI
- Declination of prosecution from AUSA where there is no ROI
- Declination to investigate by NIS
- Advice regarding availability/relevancy of 6(e) material

Compelling Reason Determination

- A. Contractors debarred, suspended, or proposed for debarment are excluding from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the acquiring agency's head or designee determines that there is a compelling reason for such action.
- B. Examples of compelling reasons at DFARS 209.405-2
 - (a) are--
 - (1). Only listed contractor can provide the supplies and services;
 - (2). Urgency requires contracting with a listed contractor;
 - (3). The contractor and a department or agency have an agreement covering the same events which resulted in the listing and the agreement includes the department/agency decision not to debar or suspend the contractor; or
 - (4). The national defense requires continued business dealings with the listed contractor.
- C. The approval authority for compelling reason requests is the Assistant Secretary of the Navy (Research, Development & Acquisition).
- D. The Point of contact for processing compelling reason requests is Michael McDonald of the ASN (RDA)-ABM Staff.

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